

REMARKS

Claims 1-10, 13-20, 22-23, 25-30, 33-38, 40-47 and 50-57 are pending in the present application. In the above amendments, claims 1, 3, 27, and 37 have been amended, and claims 11, 12, 21, 24, 31, 32, 39, 48 and 49 have been canceled, without prejudice.

Claim Rejections – 35 USC § 101

Claims 1-10, 13-20, 22, 23, 25-30, 33-38, 40-47, and 50-57 are rejected under 35 USC 101 because the claimed invention is directed to non-statutory subject matter.

Claim 1 has been amended by tying the claimed method to a particular machine or apparatus and therefore claim 1 as well its dependent claims are now deemed to more fully claim statutory subject matter as set forth in 35 USC 101.

The Office Action rejected claims 27-30, 33-36, 44-47, 50-54, and 56 under 35 U.S.C. §101 because the claimed subject matter as recited in the above identified claims may be implemented by software and therefore, the recited claims are directed to functional descriptive material which is not statutory. Claim 27 has been amended to correct a minor informality with the claim. It is respectfully submitted that the Office Action has not provided any law (case law or statute) or PTO rules (e.g., 37 CFR or MPEP) to support its rejection of these claims as non-statutory under this basis.

In each of independent claims 27 and 44, an “**Apparatus**” is clearly claimed in the preamble which falls under at least the statutory category of a machine under 35 U.S.C. 101. Hence, these claims clearly and unequivocally recite statutory subject matter. Furthermore, with respect to independent claim 27, this claim has been claimed using the statutory “means for” format. Under 35 U.S.C. Section 112, Paragraph 6, an “element in a claim may be expressed as a means ... such claim shall be construed to cover corresponding structure, ... described in the specification.” The preamble of independent claim 27 clearly recites “**Apparatus** ...” Furthermore, independent claim 27 recites a “means for ...” limitation clearly invoking 35 U.S.C. 112, 6th paragraph. Therefore, it is clear that claim 27 is directed to hardware and any interpretation under 35 U.S.C. Section 112, Paragraph 6 should be limited to hardware. To ignore the plain language of the claim is inconsistent with, and lacks foundation in, the law.

Furthermore, in claim 44, the body of the claim clearly recites hardware or apparatus limitations, e.g., “a linear feedback shift register...” Hence, each of the apparatus claims recited in independent claims 27 and 44 falls at least within the statutory category of a “machine” as set forth in 35 U.S.C. 101 and therefore recite statutory subject matter.

Independent claim 37 has been amended to now recite “A storage medium having one or more stored instructions ...” which are believed to now address the Office Action’s concerns even though the Applicant disagrees with the Office Action that the use of the language “machine-readable” renders this claim non-statutory. Claim 37 and its dependent claims fall at least within the statutory category of a “manufacture” as set forth in 35 U.S.C. 101 and therefore recite statutory subject matter.

In the USPTO’s interim instructions published in August 2009, (entitled “Interim Examination Instructions For Evaluating Subject Matter Eligibility Under 35 U.S.C. 101”), it states on page 3 under section IIA (Particular Practical Application), “If the claimed product falls within one of the three product categories of invention and does not recite judicially excepted subject matter, e.g., an abstract idea, a mathematical algorithm, a law of nature, or a natural phenomenon, it qualifies as eligible subject matter.” See http://www.uspto.gov/web/offices/pac/dapp/opla/2009-08-25_interim_101_instructions.pdf. Here, each of independent claims 27, 37, and 44 clearly falls within one of the three product categories of invention (e.g., machine or manufacture) and does not recite judicially excepted subject matter.

Based on the foregoing reasons, Applicant respectfully requests that the 101 Rejections be withdrawn.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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